

**FILED**

JUN 05 2009

ROBERT D. DENNIS, CLERK  
U.S. DIST. COURT, WESTERN DIST. OF OKLA.  
BY El. H. DEPUTY

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA

WARREN VINCENT LEE,

Plaintiff,

vs.

SHANE WYATT et al.,

Defendants.

No. CIV-07-773-W

**ORDER**

On January 30, 2009, United States Magistrate Judge Gary M. Purcell issued a Second Supplemental Report and Recommendation in this matter and recommended that this matter be dismissed without prejudice as to defendant "John Doe," who is described in the amended complaint as a "Lieutenant/Sergeant" employed at Grady County Detention Center. Magistrate Judge Purcell found that dismissal was warranted because plaintiff Warren Vincent Lee had failed to identify and serve this defendant within the time period prescribed by Rule 4(m), F.R.Civ.P.

Lee was advised of his right to object, and the matter now comes before the Court on Lee's Objection to the Report and Recommendation.

Upon de novo review of the record, that reflects Lee's persistent efforts to obtain the name of this defendant,<sup>1</sup> the Court in its discretion

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<sup>1</sup>See, e.g., Process Receipt and Return [Doc. 47] (January 28, 2008)("Defendant on duty 6/27/0[6] with D.O. Gibson when fight broke out in max housing unit."); Notice [Doc. 124] (file-stamped July 29, 2008)("I have ask[ed] Andrew A. Artus many times in writing to name the (John Doe) sgt in 06 working with D.O. Chris Gibson of Grady County. I have [given] Mr. Artus ample time to name (John Doe) sgt for the courts and myself so that this (John Doe) sgt can be served a marshal summons in a timely manner."); Plaintiff's Reply and Request Appoint of Attorney and Discovery and Answer of Last Request for Names [Doc. 167] (file-stamped November 7, 2008)(requesting that the defendants be "instruct[ed] . . . to provide the name[ ] requested "John

(1) DECLINES at this time to adopt the Second Supplemental Report and Recommendation;

(2) DIRECTS attorney Andrew A. Artus to provide Lee in writing the name of the "John Doe" defendant that he has been seeking no later than June 17, 2009, and to file proof of the same with the Clerk of the Court no later than June 22, 2009;

(3) DIRECTS the Clerk of the Court to send to Lee a copy of this Order together with a copy of a "Pro Se Litigant's Request for Issuance of Summons" and a Form USM-285 ("Process Receipt and Return");

(4) DIRECTS Lee to complete the "Pro Se Litigant's Request for Issuance of Summons" and the Form USM-285 and return them to the Clerk no later than June 26, 2009;

(5) DIRECTS the Clerk, upon receipt, to forward the executed documents together with a copy of the amended complaint [Doc. 42] to the United States Marshal;

(6) DIRECTS the United States Marshal, upon receipt of these documents, to effect service on the individual named therein; and

(7) ADVISES Lee that his failure to timely comply with this Order may result in dismissal of this matter against this defendant for failure to prosecute.

ENTERED this 5<sup>th</sup> day of June, 2009.

  
LEE R. WEST  
UNITED STATES DISTRICT JUDGE

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Doe" . . . ."); Deposition of Warren Vincent Lee (May 21, 2008) at p. 165, lines 7-9 ("That's the John Doe I want you to name, who's working[ ] [with] Chris Gibson at that time . . . .").